

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHELAN COUNTY, WASHINGTON,

Plaintiff,

BANK OF AMERICA CORP., and
BANK OF AMERICA, N.A.,

Defendants.

NO: 2:14-CV-0044-TOR

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

V.

BEFORE THE COURT is Defendant's Motion to Dismiss (ECF No. 9).

This matter was submitted for consideration without oral argument. The Court has reviewed the briefing and the record and files herein, and is fully informed.

BACKGROUND

18 This is an action to recover funds paid by Defendant Bank of America from
19 a bank account belonging to Plaintiff Chelan County pursuant to a transfer request
20 initiated by computer hackers. Plaintiff has asserted causes of action for violations

1 of Article 4A of the Washington Uniform Commercial Code, breach of contract,
2 and breach of fiduciary duty. In the instant motion, Defendants move to dismiss
3 the latter two claims for failure to state a claim. For the reasons discussed below,
4 the Court will dismiss the breach of contract claim, with leave to amend, for failure
5 to plead sufficient factual content, and the breach of fiduciary duty claim, with
6 prejudice, for lack of a cognizable legal theory.

FACTS

8 The following facts are drawn from Plaintiff's Amended Complaint and are
9 accepted as true for purposes of this motion. *Sprewell v. Golden State Warriors*,
10 266 F.3d 979, 988 (9th Cir. 2001). At the times relevant to these proceedings,
11 Plaintiff Chelan County ("Plaintiff") maintained several payroll accounts with
12 Defendant Bank of America, N.A. ("Defendant"). Plaintiff used proprietary
13 computer software provided by Defendant to submit all of its payroll requests.

14 On April 18, 2013, computer hackers initiated two unauthorized payroll
15 requests drawn on one of Plaintiff's accounts totaling approximately \$399,494.00.
16 The following day, computer hackers initiated an additional unauthorized payroll
17 request drawn on the same account totaling approximately \$603,575.00.

18 Plaintiff became aware of suspicious activity in the account on Monday,
19 April 22, 2013. Plaintiff promptly contacted Defendant and alerted it to this
20 suspicious activity. Shortly thereafter, one of Defendant's employees contacted

1 Plaintiff and inquired whether the pending payroll request in the amount of
2 \$603,575.00 was authorized. Plaintiff immediately responded that the payment
3 was not authorized. Notwithstanding this denial of authorization, Defendant
4 processed the request and transferred the funds as directed by the hackers.
5 Defendant also processed and paid the two payroll requests submitted by the
6 hackers on April 18. Defendant was subsequently able to recover a portion of the
7 funds. Plaintiff alleges that its total loss following the partial recovery is not less
8 than \$600,000.

9 Plaintiff filed the instant lawsuit on January 31, 2014. Plaintiff's Amended
10 Complaint asserts three causes of action: (1) for violations of Article 4A of
11 Washington's Uniform Commercial Code pertaining to "funds transfers"; (2) for
12 breach of contract; and (3) for breach of fiduciary duty. In the instant motion,
13 Defendant moves to dismiss Plaintiff's second and third claims pursuant to Federal
14 Rule of Civil Procedure 12(b)(6). Defendant has not challenged Plaintiff's first
15 cause of action.

16 DISCUSSION

17 A motion to dismiss for failure to state a claim tests the legal sufficiency of
18 the plaintiff's claims. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). To
19 withstand dismissal, a complaint must contain "enough facts to state a claim to
20 relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570

1 (2007). “Naked assertion[s],” “labels and conclusions,” or “formulaic recitation[s]
2 of the elements of a cause of action will not do.” *Id.* at 555, 557. “A claim has
3 facial plausibility when the plaintiff pleads factual content that allows the court to
4 draw the reasonable inference that the defendant is liable for the misconduct
5 alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While a plaintiff need not
6 establish a probability of success on the merits, he or she must demonstrate “more
7 than a sheer possibility that a defendant has acted unlawfully.” *Id.*

8 A complaint must also contain a “short and plain statement of the claim
9 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This
10 standard “does not require detailed factual allegations, but it demands more than an
11 unadorned, the defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at
12 678 (quoting *Twombly*, 550 U.S. at 555). In assessing whether Rule 8(a)(2) has
13 been satisfied, a court must first identify the elements of the plaintiff’s claim(s) and
14 then determine whether those elements could be proven on the facts pled. The
15 court should generally draw all reasonable inferences in the plaintiff’s favor, *see*
16 *Sheppard v. David Evans and Assocs.*, 694 F.3d 1045, 1051 (9th Cir. 2012), but it
17 need not accept “naked assertions devoid of further factual enhancement.” *Iqbal*,
18 556 U.S. at 678 (internal quotations and citation omitted).

19 Federal Rule of Civil Procedure 9(b) governs the pleading of allegations
20 involving fraud or mistake. In contrast to the more lenient standard set forth in

1 Rule 8(a)(2), Rule (9)(b) requires that a party “state with particularity the
2 circumstances constituting fraud or mistake” in his or her complaint. To satisfy
3 this standard, the allegations of fraud must “be specific enough to give defendants
4 notice of the particular misconduct so that they can defend against the charge and
5 not just deny that they have done anything wrong.” *Vess v. CibaGeigy Corp. USA*,
6 317 F.3d 1097, 1106 (9th Cir. 2003) (quotation and citation omitted). Thus,
7 “[a]verments of fraud must be accompanied by the who, what, when, where, and
8 how of the misconduct charged.” *Id.* (quotation and citation omitted). A party
9 may, however, plead allegations of “[m]alice, intent, knowledge, and other
10 conditions of a person’s mind” more generally. Fed. R. Civ. P. 9(b).

11 In ruling upon a motion to dismiss, a court must accept all factual allegations
12 in the complaint as true and construe the pleadings in the light most favorable to
13 the party opposing the motion. *Sprewell v. Golden State Warriors*, 266 F.3d 979,
14 988 (9th Cir. 2001). The court may disregard allegations that are contradicted by
15 matters properly subject to judicial notice or by exhibit. *Id.* The court may also
16 disregard conclusory allegations and arguments which are not supported by
17 reasonable deductions and inferences. *Id.*

18 The Ninth Circuit has repeatedly instructed district courts to “grant leave to
19 amend even if no request to amend the pleading was made, unless ... the pleading
20 could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203

1 F.3d 1122, 1130 (9th Cir. 2000). The standard for granting leave to amend is
2 generous—the court “should freely give leave when justice so requires.” Fed. R.
3 Civ. P. 15(a)(2). In determining whether leave to amend is appropriate, a court
4 must consider the following five factors: bad faith, undue delay, prejudice to the
5 opposing party, futility of amendment, and whether the plaintiff has previously
6 amended the complaint. *United States v. Corinthian Colls.*, 655 F.3d 984, 995 (9th
7 Cir. 2011).

8 **A. Breach of Contract Claim**

9 Defendant has moved to dismiss Plaintiff’s breach of contract claim for
10 failure to plead sufficient factual content to satisfy Rule 8(a)(2). To state a claim
11 for breach of contract under Washington law, a plaintiff must plausibly allege (1)
12 the existence of a valid contract; (2) breach of a duty imposed by that contract; and
13 (3) damages resulting from the breach. *Nw. Independ. Forest Mfrs. v. Dep’t of Labor*
14 & Indus.

., 78 Wash. App. 707, 712 (1995).

15 There is only one sentence in the Amended Complaint that pertains to
16 Plaintiff’s breach of contract claim: “Bank of America’s unauthorized transfer of
17 funds constitutes a breach of Bank of America’s contractual relationship with
18 Chelan County.” ECF No. 4 at ¶ 23. Without further factual enhancement, this
19 naked assertion of liability cannot satisfy Rule 8(a)(2). *Iqbal*, 556 U.S. at 678. To
20 state a plausible claim for relief, Plaintiff must allege, at a minimum, the terms of

1 the contract at issue (whether express or implied), the precise duty that was
2 breached, and the damages which resulted from the breach. *Nw. Indep. Forest*
3 *Mfrs.*, 78 Wash. App. at 712. Because this deficiency could potentially be cured
4 by alleging additional factual content, the Court will dismiss Plaintiff's breach of
5 contract claim with leave to amend within **fourteen (14) days** of the date of this
6 order. *Lopez*, 203 F.3d at 1130.

7 **B. Breach of Fiduciary Duty Claim**

8 Defendant has moved to dismiss Plaintiff's breach of fiduciary duty claim on
9 two separate grounds. First, Defendant argues that the claim fails as a matter of
10 law because it is "displaced by the UCC." ECF No. 9 at 9-10. Second, and in the
11 alternative, Defendant argues that the Amended Complaint fails to plausibly allege
12 that it owed Plaintiff a fiduciary duty. ECF No. 9 at 10-12.

13 1. Displacement by Washington Uniform Commercial Code

14 Defendant contends that Plaintiff's common law breach of fiduciary duty
15 claim is displaced by Washington's version of the Uniform Commercial Code
16 ("UCC") because the unauthorized transfers referenced in the Amended Complaint
17 are "funds transfers" within the scope of UCC Article 4A. *See* RCW 62A.4A-
18 104(a) (defining "funds transfer"). Because the UCC "displaces" all common law
19 principles within the scope of its coverage, Defendant asserts, Plaintiff's exclusive
20 remedy is under UCC Article 4A. ECF No. 14 at 5-8.

1 Pursuant to UCC § 1-103, principles of law and equity supplement the UCC
2 “[u]nless displaced by the particular provisions of this title.” RCW 62A.1-103(b).
3 The official comments accompanying this provision explain that it is designed to
4 ensure “the continued applicability to commercial contracts of all supplemental
5 bodies of law *except insofar as they are explicitly displaced* by this Act.” RCW
6 62A.1-103, UCC Comment 1 (emphasis added). Thus, to the extent a provision of
7 the UCC has “displaced” a common law rule, the UCC controls. *Lige Dickson Co.*
8 *v. Union Oil Co. of Cal.*, 96 Wash.2d 291, 299 (1981); *St. Regis Paper Co. v.*
9 *Wicklund*, 93 Wash.2d 497, 502 (1980).

10 UCC Article 4A, which applies to “funds transfers,” contains an even more
11 specialized displacement provision. This provision states: “Except as otherwise
12 provided in [§] 4A-108, this Article applies to funds transfers defined in [§]
13 4A.104.” RCW 62A.4A-102. Although § 4A-102 does not specifically mention
14 displacement of the common law, the accompanying commentary explains that
15 displacement of inconsistent common law theories and causes of action is precisely
16 what its drafters intended:

17 In the drafting of Article 4A, a deliberate decision was made to write
18 on a clean slate and to treat a funds transfer as a unique method of
19 payment to be governed by unique rules that address the particular
20 issues raised by this method of payment. A deliberate decision was
also made to use precise and detailed rules to assign responsibility,
define behavioral norms, allocate risks and establish limits on
liability, rather than to rely on broadly stated, flexible principles. In
the drafting of these rules, a critical consideration was that the various

1 parties to funds transfers need to be able to predict risk with certainty,
2 to insure against risk, to adjust operational and security procedures,
3 and to price funds transfer services appropriately. This consideration
4 is particularly important given the very large amounts of money that
5 are involved in funds transfers.

6 Funds transfers involve competing interests—those of the banks that
7 provide funds transfer services and the commercial and financial
8 organizations that use the services, as well as the public interest.
9 These competing interests were represented in the drafting process
10 and they were thoroughly considered. The rules that emerged
11 represent a careful and delicate balancing of those interests and are
12 intended to be the **exclusive means** of determining the rights, duties
13 and liabilities of the affected parties in any situation covered by
14 particular provisions of the Article. Consequently, resort to principles
15 of law or equity outside of Article 4A is not appropriate to create
16 rights, duties and liabilities inconsistent with those stated in this
17 Article.

18 RCW 62A.4A-102, Comment (emphasis added). Thus, pursuant to §§ 1-103 and
19 4A-102, the remedies set forth in Article 4A displace common law causes of action
20 relating to the same subject matter.

21 The question, then, is whether Plaintiff's breach of fiduciary duty claim
22 relates to a "funds transfer" within the meaning of Article 4A. Section 4A-104(a)
23 defines the term "funds transfer" as follows:

24 "Funds transfer" means the series of transactions, beginning with the
25 originator's payment order, made for the purpose of making payment
26 to the beneficiary of the order. The term includes any payment order
27 issued by the originator's bank or an intermediary bank intended to
28 carry out the originator's payment order. A funds transfer is
29 completed by acceptance by the beneficiary's bank of a payment order
30 for the benefit of the beneficiary of the originator's payment order.

1 RCW 62A.4A-104(a). The “Unauthorized Transfers” referenced in the Amended
2 Complaint fall squarely within this definition. Indeed, Plaintiff’s primary theory of
3 liability is that the subject transfers were “funds transfers” within the meaning of §
4 4A-104(a) that were not properly authorized under § 4A-202. ECF No. 4 at ¶ 19.
5 Accordingly, Plaintiff’s exclusive remedies are under UCC Article 4A. Plaintiff’s
6 breach of fiduciary duty claim must be dismissed with prejudice.

2. Allegations Supporting Existence of Fiduciary Duty

8 In view of the foregoing, the Court need not address whether Plaintiff's
9 allegations are sufficiently detailed to state a claim for breach of fiduciary duty.

10 | IT IS HEREBY ORDERED:

11 Defendant's Motion to Dismiss (ECF No. 9) is **GRANTED**. Plaintiff's
12 breach of contract claim is **DISMISSED** with leave to amend within **fourteen (14)**
13 **days** of the date of this order. Plaintiff's breach of fiduciary duty claim is
14 **DISMISSED** with prejudice.

15 The District Court Executive is hereby directed to enter this Order and
16 provide copies to counsel.

17 | DATED July 7, 2014.



THOMAS O. RICE
United States District Judge